

DECISION



17519
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE B-199539

DATE: March 26, 1981

MATTER OF Collins Telecommunications Products
Division

DIGEST:

1. Issue concerning propriety of use in invitation of economic price adjustment clause for standard supplies is untimely raised under § 20.2(b)(1) of GAO's Bid Protest Procedures (4 C.F.R. part 20 (1980)).
2. Issue of manner in which price increases under economic price adjustment clause will be treated after contract award is matter of contract administration and is not for GAO consideration.
3. Effect of economic price adjustment categorizations on responsiveness of bid need not be considered since categorizations are not found to be incorrect.
4. Protester has not shown that procuring agency's technical evaluation involved in assessing accuracy of successful bidder's economic price adjustment categorization totally lacked rational basis.

The United States Army Communications & Electronics Materiel Readiness Command under invitation for bids No. DAAB07-80-B-0653 received bids on seven line items of brand name or equal communications equipment and on various types of documentation for these items. Collins Telecommunications Products Division (Collins) contends that the Army should have rejected the low bid of the R. F. Communications Division, Harris Corporation (Harris), because Harris' low bid for the items was not responsive to the economic price adjustment (EPA) requirements of the invitation. Based on our review, we deny the protest.

[Protest Concerning Low Bid]

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[The EPA clause (invitation paragraph J.60) provided that the contract price for the items could be increased/decreased during the basic contract period in accordance with the EPA basis the bidder identified, from the three bases available, as being applicable to the item. If a bidder categorized an item as a "standard" supply, any increase/decrease in the contract item price would be governed by changes in the bidder's "established price" for that item or for a "sufficiently similar" item.] See Defense Acquisition Regulation (DAR) § 7-106.3 (1976 ed.) and DAR § 3-807.7(b) (DAC #76-18, March 12, 1979). [Under the two other EPA bases, which are available for items that were not standard supply items, changes in the contract item prices would be permitted only in accordance with changes in either material or labor and material cost indexes, depending upon which basis was noted by the bidder as being applicable to the item.]

Collins notes that [for the four line items on which Harris offered the brand name items listed in the invitation, Harris noted as applicable the EPA basis governed by material indexes.] [On the other three line items (Nos. 0001, 0002, and 0007), Harris bid "equal" items manufactured by itself (Model Nos. RF-270-5A, RF-551, and RF-7401, respectively), [noting the standard supply EPA basis as applicable to each. It is the latter categorization which is the basis of the Collins protest.]

[Collins maintains that the equal items Harris bid are not standard supplies (i.e., no established prices exist for the exact items bid, and the items bid are not "sufficiently similar" to any other Harris-manufactured products upon which prices the EPA "established prices" may be based). [Consequently, Collins insists that Harris' bid should have been rejected as nonresponsive to the EPA requirements.]

It is the position of both the contracting agency and Harris that the EPA basis designated by a bidder in its bid plays no part in the evaluation of a bid for award or in the determination of the responsiveness of that bid. Moreover, the Army insists that a study of the Collins allegations and of the Harris items which are "sufficiently similar" to those offered in the Harris bid and

upon whose prices the "established prices" are based shows that Harris properly categorized the three items in question as "standard" supplies.)

We first note that certain aspects of the Collins protest may not be examined by our Office. To the extent that Collins protests the use in this procurement of the EPA basis for "standard" supplies, such a protest, raised after bid opening even though the issue was apparent prior to bid opening, would be untimely and not for consideration. 4 C.F.R. § 20.2(b)(1) (1980). Also, Collins raises questions pertaining to how the contracting agency will treat requests for price increases during contract performance. The matter of price increases after award involves contract administration and is not within the scope of our jurisdiction. Albert S. Friedman d/b/a Reliable Security Services, B-194016, February 16, 1979, 79-1 CPD 122.

We further note that no need arises to determine whether an EPA categorization affects the responsiveness of a bid in view of our conclusions on the issue of whether the Harris categorizations were correct.)

As regards the Harris categorizations, Collins advises that it assumes that we will verify whether item 0002 has been "sold in substantial quantities to the general public" since the Army insists that the facts underlying the categorization may not be disclosed; however, Collins agrees that item 0002 meets the "sufficiently similar" test described in DAR § 3-807.7(b)(3), above. As regards items 0001 and 0007 where Harris offered its "equal" models (RF-270-5A and RF-7401), Collins states that Harris has not "manufactured or sold either Item 0007 or the receiver exciter or remote control interface of Item 0001." Collins states further that:

"Products which have been sold by Harris in sufficient quantity * * * are so different from the requirements [described for items 0001 and 0007] of this solicitation [that] it would not be possible for Harris to legitimately utilize the based on pricing concept [of DAR 3-807.7(b)(3) above]."

In its protest correspondence elaborating on the key technical differences allegedly involved here, [Collins also submitted a company engineer's affidavit which contains a "detailed matrix" of engineering analysis purportedly showing that the "receiver exciter" component of the Harris bid for item 0001 will require a major redesign to comply with the "bid requirements." Given these differences, [Collins contends that the Army improperly concluded that the component to be delivered under the contract is "sufficiently similar" to the existing Harris component to afford a basis of price comparison under the above EPA provision.]

Similarly, [Collins also contends that the item Harris bid for item 0007 cannot pass the "sufficiently similar" standard.] As stated by the company:

"[Harris bid its] RF-7401 Remote Control as Item 0007 * * *. The [unit] bid [is] described in the RF Comm descriptive literature as providing state-of-the-art, microprocessor based, full remote control and monitoring via an RS-232C serial digital data stream for their HF transceivers. * * * The RF Comm RF-777 remote control system, * * * which may have been sold in minor quantities, consists of five separate units including a CRT display and desktop calculator/keyboard. The RF-7401 has no CRT display and uses a simple key pad in lieu of desktop calculator/keyboard. It is therefore inconceivable that the new RF-7401 remote control could have any significant basis in existing RF Comm equipment."

In reply to this ground of protest, (the Army submitted a detailed technical and price analysis.) For example, as regards the matrix, the Army technical analysis makes 35 separate comments and concludes that the proposed component is considered "sufficiently identical" to the existing component to permit the required pricing comparison. Many of these comments state that the "receiver-exciter" component already is "compliant" with the solicitation's requirements,

or "Collins admits compliance," or "compliant-determine by test."

In reply to Collins' allegation concerning item 0007 the Army states:

"The RF 7401 unit is a complete repackaging of RF 797 Local Control Unit which is part of the RF 777 Remote Control System. The RF 797 and the RF 7401 units are similar in design - each is a micro processor based system.

"a) The front panel of each unit uses five identical ICs (integrated circuits). The controls are installed internally on the RF 797 and externally on the RF 7401.

"b) The CPU/I/O circuitry in RF 797 uses ten ICs, nine of which are used in the RF 7401 (the tenth is not used). The P/C card in RF 7401 is a new layout but the same design.

"c) The power supply is identical except for the heat sink layout.

"The RF 7401 is considered to be sufficiently identical technically to the RF 797 to permit the difference between the prices of the items to be identified and justified without resort to cost analysis."

[Our decisions have consistently held that determinations involving technical matters are the responsibility of the agency concerned and are questioned by our Office only upon a clear showing of unreasonableness.] RAI Research Corporation, B-184315, February 13, 1976, 76-1 CPD 99. A technical evaluation will not be regarded as unreasonable merely because there exists some disagreement between the procuring agency and the offeror. For an evaluation to be determined unreasonable, it must clearly appear from the record that there is no rational basis for the agency's determination. Joanell Laboratories, Inc., 56 Comp. Gen. 291 (1977), 77-1 CPD 51. Further, the protester has the burden of affirmatively proving its case.

C.L. Systems, Inc., B-197123, June 30, 1980, 80-1
CPD 448.

Given these principles and the broad technical standard established by the phrase "sufficiently similar" in DAR § 3-807.7(b)(3), above, [we cannot conclude that the Army lacked any rational basis for determining that the products which Harris bid for items 0001 and 0007 were "sufficiently similar" to other existing Harris components even if Harris will have to incur certain redesign and testing effort in order to supply compliant products.]

As to the pricing analyses involved under items 0001, 0002, and 0007, [the Army found that the Harris commercial items upon which the "established prices" for the contract items were based had been "sold in substantial quantities to the general public" and that the commercial items and the contract items were "sufficiently similar"--given the above technical conclusions--"to permit the difference between the prices of the items to be identified and justified without resort to cost analysis." See, DAR § 3-807.7, above. Based on our review, [we cannot disagree that the products used for the "based on" prices have been sold in substantial quantities to the general public; therefore, we cannot question the Harris EPA categorizations for these items.]

The protest is denied.]

Milton J. Aoulan

Acting Comptroller General
of the United States